

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Heroux et al.

Title: ASSAY FOR MEASURING NUCLEIC ACID BINDING
PROTEINS AND ENZYME ACTIVITIES

Appl. No.: 09/976,437

Filing Date: 10/15/2001

Patent No: 7,439,017

Grant Date: 10/21/2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF DISMISSAL

This is a request for reconsideration of the dismissal dated September 30, 2009 (hereinafter “Dismissal”). A fee was submitted with the original request for reconsideration of Patent Term Adjustment (PTA) of December 10, 2008. If a request for reconsideration is not appropriate, then this present request is a petition under 37 C.F.R. §§ 1.181, 1.182, and/or 1.183.

In the Dismissal, the U.S. PTO refused to follow a decision of the United States District Court for the District of Columbia with regard to Patent Term Adjustment (PTA).

U.S. Patent Law, specifically 35 U.S.C. § 154(b)(4)(A), provides:

“An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent. Chapter 7 of title 5, United States Code, shall apply to such action. Any final judgment resulting in a change to the period of adjustment of the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change.”

Given that the above-quoted law expressly gives the United States District Court for the District of Columbia jurisdiction and authority over the U.S. PTO with regard to PTA, the U.S. PTO is not at liberty to disregard and ignore decisions of the District Court for the District of Columbia. Reconsideration of the Dismissal is respectfully requested on this basis.

In the interest of judicial and administrative economy and efficiency, it is respectfully requested that a decision on this present request for reconsideration be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

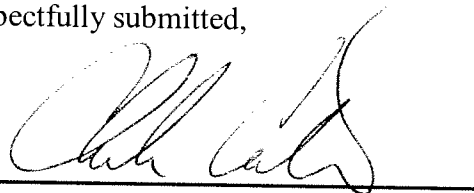
No additional fees are believed to be required. However, if any additional fees are required, the Commissioner is authorized to make appropriate charges to Deposit Account No. 19-0741 to provide exact payment.

Respectfully submitted,

Date

Nov. 24, 2009

By



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